IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

And

THE HON'BLE Mr. JUSTICE C.V. RAMULU

WRIT PETITION No.8050 of 2005

Between:

M/s. Sri Balaji Enterprises,

Rep. by A.K. Chaitanya, S/o. A.S.N. Murthy,

aged 28 years R/o. Flat No.6, D.No.47-9-28,

Mukundu Suvasa Apartments,
3rd Lane, Dwarakanagar, Visakhapatnam – 16,

Visakhapatnam District.

..... PETITIONER

AND

1) The Government of A.P.,
Transport, Roads & Buildings (Tr.I) Department,
Rep. by its Special Chief Secretary, Secretariat,
Hyderabad.

2) The Additional Registering Authority
& Regional Transport Officer, Visakhapatnam,
Visakhapatnam District.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate Writ, Order or direction, preferably one in the nature of a Writ of Mandamus declaring the amendment in respect of Column No.8 of the impugned G.O. Ms. No.37, Transport, Roads & Buildings (Tr.I) Department, dated 16-02-2005, issued by the 1st respondent enhancing the rate of tax in respect of the Cranes belonging to the Petitioner Company bearing Registration Nos.AP.31/AH 5459; AP31/K 5927 and AP31/AB 2924 as illegal, arbitrary, violative of principles of natural justice and opposed to Article 19 (1) (g) of the Constitution of India and consequently direct the 2nd respondent to accept the tax in respect of the said Cranes as per the rate of tax vide Notification in G.O. Ms. No.75, Transport, Roads & Buildings (Tr.II) Department, dated 27-04-1993 as usual.

Counsel for the Petitioner: Mr. V. Narasimha Reddy

Counsel for the Respondents: G.P. for Transport

The Court made the following :

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ORDER: (Per Hon'ble Sri Justice B. Sudershan Reddy)

Heard the learned counsel for the petitioner and the learned Government Pleader for Transport. At their request, the writ petition itself is taken up for final disposal at the stage of admission.

Rule Nisi.

The Government of Andhra Pradesh in exercise of the powers conferred by Section 3 of the A.P. Motor Vehicles Taxation Act, 1963 (for short 'the Act') issued a notification in G.O. Ms. No.37, Transport, Roads & Buildings (Tr. I) Department, dated 16-02-2005, making certain amendments to the notification issued in G.O. Ms. No.75, Transport, Roads & Buildings (Tr. II) Department, dated 27-04-1993, as subsequently amended.

The petitioner in this case is aggrieved by the amendment made in respect of Clause 8(f) of the First Schedule of the Act concerning the Motor Vehicles other than those liable to tax under the First Schedule.

The petitioner is the owner of four HMV Cranes.
In all these Cranes, the unladen weight is 30,000 Kgs., and the tax was being paid on the basis of unladen weight as per the rate of tax fixed by the Government from time to time. Admittedly, the petitioner has been paying the tax in respect of four Cranes owned by it, as per the notification in
G.O. Ms. No.75, dated 27-04-1993. As per Clause - 8 of the Schedule appended to the said notification, the tax is levied and collected for all the Cranes having unladen weight of more than 4000 Kgs. at the rate of Rs.345/- + Rs.40/- for every 250 Kgs. or part thereof in excess of 4000 Kgs. i.e., a sum of Rs.4,705/- per quarter for each Crane.

Be that as it may, the petitioner in this writ petition is concerned with regard to amendment to Clause 8(f) of the Schedule appended to the impugned notification in
G.O. Ms. No.37, dated 16-02-2005, under which the tax payable in respect of Cranes is enhanced by 100% i.e. the tax payable earlier was doubled by the impugned Notification.
This is the only question raised in this writ petition.

Section 3 of the Act enables the Government to levy tax on every Motor Vehicle used or kept for use, in a public place in the State. The notification shall

specify the class of motor vehicles on which, the rates for the periods at which, and the date from which, the tax shall be levied. However, proviso to Section 3 of the Act mandates that the rates of tax shall not exceed the maximum specified in Column (2) of the First Schedule in respect of the classes of the motor vehicles fitted with pneumatic tyres specified in the corresponding entry in Column (1) thereof; and one and a half times the said maximum in respect of such classes of motor vehicles as are fitted with non-pneumatic tyres. That in case of other
non-transport vehicles not exceeding 2286 Kgs. in unladen weight except omni buses and chassis of motor vehicles, the tax shall be levied at the rates specified in the Third Schedule.

In the instant case, we are concerned with the rates specified in the First Schedule of the Act.

Clause 8(f) of the First Schedule of the Act clearly specifies the rate of tax for the motor vehicles other than those liable to tax under the foregoing provision of the Schedule. For the Motor Vehicles weighing more than 4,000 Kgs. unladen (for every 250 Kgs. or part thereof in excess of 4,000 Kgs.), the rate of tax is specified at Rs.720/- + Rs.80/-.
Admittedly, the impugned notification does not travel beyond the maximum rate specified in Clause 2 of the First Schedule.

In such view of the matter, it is not possible to hold that the impugned notification is *ultra vires* the First Schedule of the Act.

However, Sri V. Narasimha Reddy, learned counsel for the petitioner, submits that the increase of tax under the impugned notification by 100%, which cannot be countenanced by this Court.

In our considered opinion, the enhancement of tax by 100% itself is no ground for interference by this Court in exercise of its power under Article 226 of the Constitution of India. The Court cannot decide, at what rate the tax

payable could have been enhanced by the State as long as such enhancement *intra vires* the Schedule. No other point is urged.

We find no merit in this Writ Petition and the same shall accordingly stand dismissed without any order as to costs.

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B. SUDERSHAN REDDY, J

Date:12-04-2005.

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C.V. RAMULU, J

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To

1) The Special Chief Secretary,

Government of A.P.,
Transport, Roads & Buildings (Tr.I) Department,
Hyderabad.

2) The Additional Registering Authority
& Regional Transport Officer, Visakhapatnam,
Visakhapatnam District.

3) Two C.Cs. to G.P. for Transport, High Court of A.P.,

Hyderabad (O.U.T.)

4) Two C.D. copies.